

CONTRACT #2
RFS # 309.01-104

Treasury Department
Unclaimed Property Division

VENDOR:
PRA Government
Services, LLC

REQUEST: NON-COMPETITIVE CONTRACT

RECEIVED

APPROVED

AUG 28 2006

FISCAL REVIEW

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

1) RFS #	309.01-104	
2) State Agency Name :	Tennessee Treasury Department	
3) Service Caption :	Provision of abandoned property examination services for the State in connection with the Uniform Disposition of Unclaimed Property Act.	
4) Proposed Contractor :	PRA Government Services, LLC	
5) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt)	November 1, 2006	
6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	October 31, 2011	
7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	\$350,000	
8) Approval Criteria : (select one)	<input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service	
9) Description of Service to be Acquired :	See Attached Memorandum Dated August 24, 2006	
10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service :		
11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used :		
12) Name & Address of the Proposed Contractor's Principal Owner(s) : (not required if proposed contractor is a state education institution)		
13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service :		

14) Documentation of Office for Information Resources Endorsement :
(required only if the subject service involves information technology)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

15) Documentation of Department of Personnel Endorsement :
(required only if the subject service involves training for state employees)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

16) Documentation of State Architect Endorsement :
(required only if the subject service involves construction or real property related services)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process :
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

REQUESTING AGENCY HEAD SIGNATURE & DATE :

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)

Dale Sini

Agency Head Signature

Aug. 24, 2006

Date

STATE OF TENNESSEE



DALE SIMS
STATE TREASURER

TREASURY DEPARTMENT
STATE CAPITOL
NASHVILLE, TENNESSEE 37243-0225

JANICE CUNNINGHAM
EXECUTIVE ASSISTANT

MEMORANDUM

RECEIVED

AUG 28 2006

FISCAL REVIEW

TO: The Honorable M. D. Goetz, Jr., Commissioner
Department of Finance and Administration

FROM: Dale Sims, Treasurer *Dale Sims*
Department of the Treasury

DATE: August 24, 2006

RE: *Noncompetitive Contract Request – Unclaimed Property Examination
Services Contract for the Division of Unclaimed Property*

BACKGROUND

The Tennessee Treasury Department is responsible for administering Tennessee's Unclaimed Property Act. Under this Act, companies within and outside the State of Tennessee are required to turn over to the State unclaimed property belonging to its residents. Unclaimed property is caused when financial assets are forgotten or lost due to factors that include: change of address, death, name change, clerical errors or lack of action on the part of the owner or heir. Unclaimed property consists of such things as: dormant bank accounts, uncashed payroll checks, securities, unclaimed security deposits, insurance proceeds and etc. Once the statutory dormancy period has elapsed (the period in which there has been no owner generated activity and the owner cannot be found), the assets must be turned over to the State, which acts as custodian in perpetuity until the rightful owner or heir is located to claim their property.

The Unclaimed Property Act authorizes the Treasury Department to enter into contracts with companies for the purpose of assisting the Department in carrying out the Act. Since numerous companies exist outside the State of Tennessee who are not regularly reporting (or not reporting at all) as required, it is necessary the Department procure contracts for the identification and collection from persons, firms and entities that are holding or in possession of unclaimed property subject to report and delivery under the Act.

The Treasury Department has existing contracts with Affiliated Computer Services, Inc. (ACS), Audit Services U.S., LLC (ASL), Kelmar Associates, L.L.C., and Abandoned Property Experts, LLC (APEX). The Treasury Department through its membership with the National Association of State Unclaimed Property Administrators keeps apprised of any additional viable companies that can perform these services. Once identified, it is the

Department's goal to contract with these additional companies in order to increase the State's out-of-state unclaimed property search capacity. Companies that perform these services are entitled to compensation only if unclaimed property is actually delivered to and received by the State as a result of their examinations. The compensation is a percentage of the value of the net abandoned property actually received by the State. This percentage ranges between 12 and 12 ½%.

I.

DESCRIPTION OF SERVICE TO BE ACQUIRED

PRA Government Services, LLC (PRA) specializes in providing city, county and state governments and public entities with a full range of services, including revenue administration, revenue discovery and recovery, aged-receivables management and compliance auditing. PRA currently has contracts with several states to provide unclaimed property auditing services. The Treasury Department also desires to obtain a contract with PRA in order to increase the State's out-of-state unclaimed property search capacity. Under the contract, PRA would identify, recover, process and otherwise report past due abandoned property to the State. PRA would perform comprehensive audits of holders as authorized by the State (or by another state in which the State of Tennessee desires to participate) that includes a field examination of all applicable unclaimed property types through a review of the appropriate books and records of the respective holder and/or holder's agent.

PRA would only be entitled to compensation under the contract if unclaimed property is actually delivered to and received by the State as a result of the examination. The compensation would be 10 ½ % of the value of the abandoned property actually delivered to the State with the exception of property delivered to the State by transfer agents. In such case, the compensation would be 2% of the abandoned property. PRA would be responsible for all direct and indirect costs and expenses it incurs in performing the examination. This proposed fee arrangement is consistent with (if not lower than) the market place, and consistent with the fee PRA charges other state unclaimed property programs. In fact, if PRA enters into a similar arrangement with another state that provides for fees that is less than the fees set forth above, then the proposed contract with PRA would automatically be amended to substitute the lower fees in place of the fees described above.

II.

EXPLANATION OF THE NEED FOR OR REQUIREMENT PLACED ON THE PROCURING AGENCY TO ACQUIRE THE SERVICE

As previously stated under "Background", the Treasury Department is responsible for administering Tennessee's Unclaimed Property Act. Under the Act, companies within and outside the State of Tennessee are required to turn over to the State unclaimed property belonging to its residents. The Act authorizes the Treasury Department to enter into contracts with companies for the purpose of assisting the Department in carrying out the Act. Since numerous companies exist outside the State of Tennessee who are not regularly reporting (or not reporting at all) as required, it is necessary the Department

procure contracts for the identification and collection from persons, firms and entities that are holding or in possession of unclaimed property subject to report and delivery under the Act. By entering into the proposed contract, the State would more than quadruple its out-of-state search capacity, thereby increasing the chances that unclaimed property would not otherwise go unreported to the State.

III.

EXPLANATION OF WHETHER THE PROCURING AGENCY BOUGHT THE SERVICE IN THE PAST, AND IF SO, WHAT PROCURMENT METHOD IT USED

The Treasury Department has existing contracts with ACS, ASL, Kelmar, and APEX that were procured through non-competitive negotiation. Under these contracts, ACS, ASL, Kelmar, and APEX locate holders of unclaimed property who are subject to the Unclaimed Property Act and who are not regularly reporting (or not reporting at all) to Tennessee.

The Tennessee Treasury Department is a member of the National Association of State Unclaimed Property Administrators, which consists of all the states in the union. Through the Department's active participation in this organization, it is our belief that we have contracted (or in the process of contracting) with all viable companies that can perform this service. The Department would welcome any additional such companies that can perform this service since it only aids the State by increasing its out-of-state unclaimed property search capacity. The companies are only entitled to compensation if unclaimed property is actually received by the State as a result of their examinations. The compensation is a percentage of the value of the net abandoned property received by the State.

IV.

NAME AND ADDRESS OF THE PROPOSED CONTRACTOR'S PRINCIPAL OWNER(S)

PRA is a wholly owned subsidiary of Portfolio Recovery Associates, which is a publicly traded company on the NASDAQ.

V.

EVIDENCE OF THE PROPOSED CONTRACTOR'S EXPERIENCE AND LENGTH OF EXPERIENCE IN PROVIDING THE SERVICE

PRA's parent company, Portfolio Recovery Associates, is a full service provider of outsourced receivables management and related services, based in Norfolk, Virginia, and chartered in Delaware. It has more than 1,200 employees in four states - Virginia, Kansas, Nevada and Alabama - and has acquired in excess of \$13 billion of accounts and 7,000,000 customer relationships since its founding in 1996.

PRA specializes in providing city, county and state governments and public entities with a full range of services, including revenue administration, revenue discovery and recovery, aged-receivables management and compliance auditing. PRA's offices are located in Birmingham, Alabama.

PRA has an established team of auditing experts with a combined experience of eight years in unclaimed property filings and administration and over twenty years of complex sales/business tax audit experience. Ms. Rebecca Adams, who will be a primary PRA employee assigned to the State's contract, is a certified public accountant within the State of Alabama. She holds a Bachelor of Science degree with a major in accounting from the University of Montevallo and is a member of the American Institute of Certified Public Accountants (AICPA). Ms. Adams has worked in public accounting, consulting and industry for over twenty years in audit, tax and management advisory services. The audits included federal, state and local governmental engagements as well as financial audits. She implemented management control systems as a consultant, offering fresh approaches for identifying economic indicators and proper reporting as catalysts for improvements. In industry, as controller for a company with a total portfolio over one billion, she implemented processes to allow for complete adherence for tax compliance at all levels and unclaimed property reporting with various states.

Another primary PRA employee who will be assigned to the State's contract is Mr. Ray Miles, Jr. Mr. Ray earned a B.S. from Auburn University in Business and a MBA from Samford University. He has gained valuable experience working for Fortune 500 companies, including Arthur Anderson & Company, Jackson Hewitt, and Marshall Durbin Food Corporation. He earned a certificate in Unclaimed Property Auditing from Andreoli, LLP. Mr. Ray has heavy experience as senior finance and control manager in the areas of food processing, agriculture, aviation, consulting and public accounting. He has a strong background in internal auditing, budgeting, profit planning, tax management, and regulatory compliance. Mr. Ray possesses a balanced blend of financial/business judgment, communication skills, and planning experience gained from twenty plus years. Ray travels the entire nation conducting audits for PRA.

VI.

DOCUMENTATION OF OFFICE FOR INFORMATION RESOURCES ENDORSEMENT (REQUIRED ONLY IF THE SUBJECT SERVICE INVOLVES INFORMATION TECHNOLOGY)

N/A

VII.

DOCUMENTATION OF DEPARTMENT OF PERSONNEL ENDORSEMENT (REQUIRED ONLY IF THE SERVICE INVOLVES TRAINING FOR STATE EMPLOYEES)

N/A

VIII.

**DOCUMENTATION OF STATE ARCHITECT ENDORSEMENT
(REQUIRED ONLY IF THE SUBJECT SERVICE INVOLVES CONSTRUCTION
OR REAL PROPERTY RELATED SERVICES)**

N/A

IX.

**DESCRIPTION OF PROCURING AGENCY EFFORTS TO IDENTIFY
REASONABLE, COMPETITIVE, PROCUREMENT ALTERNATIVES
(RATHER THAN TO USE NON-COMPETITIVE NEGOTIATION)**

The Treasury Department through its membership with the National Association of State Unclaimed Property Administrators keeps apprised of viable companies that can perform these services. It is the Treasury Department's belief that it has contracted (or in the process of contracting) with all viable companies that can perform this service.

X.

**JUSTIFICATION OF WHY THE STATE SHOULD USE NON-COMPETITIVE
NEGOTIATION RATHER THAN A COMPETITIVE PROCESS**

The Treasury Department has existing contracts with ACS, ASL, Kelmar and APEX whereby these companies locate holders of unclaimed property who are subject to the Unclaimed Property Act and who are not regularly reporting (or not reporting at all) to Tennessee. These contracts were procured through non-competitive negotiation. By entering into the proposed contract, the State would more than quadruple its out-of-state search capacity, thereby increasing the chances that unclaimed property would not otherwise go unreported to the State. The Department would welcome any additional such companies that can perform this service since it only aids the State by increasing its out-of-state unclaimed property search capacity.

C O N T R A C T S U M M A R Y S H E E T

060706

RFS #	Contract #
309.01 — 104 — 07	FA —
State Agency	State Agency Division
Tennessee Treasury Department	Unclaimed Property Division
Contractor Name	Contractor ID # (FEIN or SSN)
PRA Government Services, LLC	<input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 34-2050121

Service Description

The Contractor will provide abandoned property examination services for the State in connection with the Uniform Disposition of Unclaimed Property Act.

Contract Begin Date	Contract End Date	SUBRECIPIENT or VENDOR?	CFDA #
November 1, 2006	October 31, 2008	Vendor	

Mark Each TRUE Statement
☒ Contractor is on STARS

☒ Contractor's Form W-9 is on file in Accounts

Allotment Code	Cost Center	Object Code	Fund	Funding Grant Code	Funding Subgrant Code
313.20	88	083	11		

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2007	\$117,000.00				\$117,000.00
2008	\$175,000.00				\$175,000.00
2009	\$ 58,000.00				\$ 58,000.00
TOTAL:	\$350,000.00				\$350,000.00

— COMPLETE FOR AMENDMENTS ONLY —

FY	Base Contract & Prior Amendments	THIS Amendment ONLY	State Agency Fiscal Contact & Telephone #
			Mary Roberts-Krause, General Counsel 10 th Floor, Andrew Jackson Building 741-8202, extension 104
			State Agency Budget Officer Approval
TOTAL:			
End Date:			

Contractor Ownership (complete only for base contracts with contract # prefix: FA or GR)

☐ African American
 ☐ Person w/ Disability
 ☐ Hispanic
 ☐ Small Business
 ☒ NOT minority/disadvantaged
☐ Asian
 ☐ Female
 ☐ Native American
 ☐ OTHER minority/disadvantaged—

Contractor Selection Method (complete for ALL base contracts— N/A to amendments or delegated authorities)

☐ RFP
 ☐ Competitive Negotiation
 ☐ Alternative Competitive Method
☒ Non-Competitive Negotiation
 ☐ Negotiation w/ Government (e.g., ID, GG, GU)
 ☐ Other

Procurement Process Summary (complete for selection by Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
TREASURY DEPARTMENT
AND
PRA GOVERNMENT SERVICES, LLC**

This Contract, by and between the State of Tennessee, Treasury Department, hereinafter referred to as the "State", and PRA Government Services, LLC, hereinafter referred to as the "Contractor", is for the provision of identifying, recovering, processing and otherwise reporting past due abandoned property to the State, as further defined in the "SCOPE OF SERVICES".

The Contractor is a limited liability company. The Contractor's address is 3001 Second Avenue South; Birmingham, Alabama 35233. The Contractor's place of incorporation or organization is the State of Delaware.

A. SCOPE OF SERVICES:

A.1. Appointment as Agent. The State hereby appoints the Contractor as agent for the State of Tennessee pursuant to Tennessee Public Acts of 1987, Chapter 43, for the purpose of assisting the State in carrying out certain provisions of the Tennessee Uniform Disposition of Unclaimed Property Act.

A.2. Identification of Abandoned Property.

a. Subject to the State's written authorization, the Contractor shall undertake to examine and identify unclaimed property subject to report and delivery to the State under Tennessee Code Annotated, Title 66, Chapter 29 from persons, firms and entities that are holding or in possession of such property (all such property is hereinafter referred to as Abandoned Property). Abandoned Property includes the following:

- (1) Unclaimed dividends.
- (2) Unclaimed or unpaid interest owing on debt obligations.
- (3) Principal sums unclaimed or unpaid in connection with matured debt obligations.
- (4) Unclaimed or undelivered securities, warrants, rights, unconverted preferred stock and other intangible interests in business associations.
- (5) Outstanding securities and other intangible interests in a business association ("underlying shares").
- (6) Liquidations and any other distributions resulting from the liquidation or reorganization of a business association.
- (7) Unclaimed interests in mutual funds.
- (8) General ledger credit balances such as customer accounts, patient accounts, refunds, and discounts.
- (9) Outstanding checks and electronic transactions issued for payroll, commissions, vendor and other payments.
- (10) Deposits, unearned revenues, unallocated remittances, gift certificates and balances due to others.

(11) Such other property as covered under Tennessee Code Annotated, Title 66, Chapter 29.

- b. For purposes of this Contract, the examination and identification of Abandoned Property means a comprehensive audit initiated by the State (or by another state in which the State of Tennessee, Treasury Department has agreed to participate) that includes a field examination of all applicable Abandoned Property types through a review of the appropriate books and records of the respective holder and/or holder's agent.
- c. In conjunction with the examination and identification of Abandoned Property, the Contractor shall:
 - (1) Process records of Abandoned Property obtained from holders and/or their agents;
 - (2) Prepare reports of Abandoned Property in accordance with the requirements of the State's unclaimed property law; and
 - (3) Direct holders and/or their agents to obtain instructions as to how and where to deliver Abandoned Property deemed owing to the State in accordance with Section A.8 below.
- d. The Contractor shall notify the State if a holder files for bankruptcy before or during an approved examination. Said notification shall be made within seven (7) calendar days of discovery by the Contractor of the bankruptcy filing. In such case, the Contractor shall prepare a proof of claim or provide such information to enable the State to file a proof of claim within seven (7) calendar days of discovery by the Contractor of the bankruptcy filing.

A.3. Enforcement Efforts.

- a. The State agrees to send such notices that may be required to each holder examination candidate naming the Contractor as its agent and to assist the Contractor in obtaining access to the records that are necessary to complete its examination. If a holder refuses to subject itself to an examination by the Contractor, or is uncooperative in an ongoing examination by the Contractor hereunder, then the Contractor shall notify the State within seven (7) calendar days of such occurrence.
- b. The Contractor acknowledges and agrees that it cannot initiate legal action or enter into an agreement with a holder on behalf of the State without the prior written consent of the State. In the event the State decides to file suit to recover the property, such suit shall be filed by the Tennessee State Attorney General. The Contractor shall cooperate fully with State attorneys, and shall provide such attorneys with all records and other information in the Contractor's possession regarding the property sought to be obtained.
- c. The Contractor may inform a holder of Tennessee law regarding penalties and interest. Provided, however, the Contractor shall not impose or threaten to impose such penalties or interest without the State's prior written consent.
- d. The Contractor shall commence the examination of the holder within ninety (90) calendar days from the date the holder is notified of the Contractor's intent to examine and identify unclaimed property. If the Contractor has not commenced such examination within the ninety-day period, the Contractor shall inform the State in writing as to the reasons why and shall request the assistance and direction of the State as to the next appropriate course of action.
- e. The Contractor shall complete the identification and reporting of Abandoned Property to the State as soon as is practical after commencing the examination, but in no event more than one (1) year from the starting date of the examination, except for a showing of good cause otherwise.

A.4. Joint Efforts with Participating States.

- a. The State hereby acknowledges and agrees that the services contemplated hereby are being undertaken concurrently with several other states which have entered into similar agreements with the Contractor (hereinafter referred to as the Participating States) having similar demands in connection with their respective unclaimed property laws. The Contractor represents and warrants that it shall act as the sole agent of the State and the other Participating States in performing the services hereunder and shall not act as an agent for holders of Abandoned Property.
- b. If the holder has unclaimed property for states not participating in an audit initiated by the State hereunder, it will be the holder's responsibility to report the property to the appropriate states. If Tennessee has reciprocity with certain states and wants the Contractor to report the property to such states, the Contractor shall honor Tennessee's request.
- c. If Tennessee is the initiating state and one or more other states choose to notify the holder that it also wishes to conduct an Abandoned Property examination using the services of the Contractor, then the Contractor shall provide Tennessee a copy of the letter of examination intent of those other states.

A.5. Examination Procedures. The examination of the books and records of the holders of Abandoned Property, and the findings in connection with the review of such records shall be made pursuant to the following procedures:

- a. The holdings of the U.S. Supreme Court in *Texas v. New Jersey*, 85 S.Ct. 1136 (1965), *Pennsylvania v. New York*, 92 S.Ct. 2880 (1972) and *Delaware v. New York*, 113 S.Ct. 1550 (1993), and any applicable federal legislation regarding which state has the right to abandoned property shall be followed.
 - (1) Where the name and last known address of the apparent owner according to the books and records of the holder is in Tennessee, it shall be deemed to be reportable to Tennessee. The Contractor shall obtain assurance from the holder or its transfer agent that it has complied with the due diligence requirements of Tennessee Code Annotated, Section 66-29-113(f) with respect to finding the owner of the property prior to remitting the property to the State. All types of Abandoned Property shall be identified and due diligence shall be performed prior to remitting the same to the State.
 - (2) If the holder has no records whatsoever setting forth the name and last known address of the apparent owner, the property shall be deemed reportable to the state of incorporation of the holder. An address shall be deemed to mean a description of location sufficient for the delivery and receipt of mail.
 - (3) Where no address exists, but the records of the holder establish that the apparent owner resided in Tennessee, the Contractor shall advise Tennessee and the holder's state of incorporation for the purpose of determining which state possesses the priority claim to the abandoned property.
 - (4) Where the address of the apparent owner cannot be readily ascertained but in fact exists in the books and records of the holder, sampling techniques will be used to allocate the property among the states participating in the review. This allocation shall apply only to those time periods where addresses in fact do exist in the books and records, but are not readily ascertainable. In such event, if required, sampling techniques will also be utilized to ascertain the proportion of the total reportable property for which the holder has names and last known addresses. The Contractor shall notify the State when sampling techniques under this Paragraph are being used.

- (5) In the event a state with a superior priority claim provides for an exemption, deduction, exclusion or otherwise does not choose to assert jurisdiction over the Abandoned Property, Tennessee shall be the state for reporting this property if the holder is incorporated in Tennessee or if the transaction out of which the property arose occurred in Tennessee. Further, Tennessee shall be a state of proportion for reporting such property as described in Paragraph (4) above where it is not the state of incorporation. Where no address information exists at all with respect to such property as required by Paragraph (4) above, Tennessee shall be a state of proportion by some other allocation technique as approved by Tennessee.
 - (6) If a circumstance arises in which the above priority rules and allocation methodologies do not apply, or the state having the priority claim cannot be determined, the Contractor shall notify the State of such fact if the holder is incorporated in Tennessee or if an address in Tennessee may be established from the books or records of the holder.
 - (7) If for certain periods the amount of demandable or reportable abandoned property cannot be ascertained from the books and records of the holder, projection and estimation techniques may be used to determine the demandable and/or reportable amounts for such periods. If names and addresses exist with respect to the abandoned property used in the projection and estimation, the names and addresses shall not be used to determine which state has the priority claim to the abandoned property estimated to be due. All sampling and projection and estimation techniques used by the Contractor shall be a method approved by the State prior to their use.
 - (8) If the State's Unclaimed Property Law provides an express cutoff date setting forth when the obligation of a holder to report commenced, it will be used.
 - (9) If the Unclaimed Property Law does not set forth a cutoff date, the holding in *Douglas Aircraft Co. v. Cranston*, 58 Cal.2d 462, 4 Cal.Rptr. 851, 374 P.2d 819 (1962) will be followed and the obligations of the holder will be deemed to require the reporting of all unclaimed property in the possession of the holder on which the statute of limitations had not yet run as of the effective date of the adoption of the State's Unclaimed Property Act. However, in those instances where the State advises the Contractor that state law permits retroactive extension or abolition of the statute of limitations, the longest period otherwise permitted by law shall be used (subject to the availability of the records of the holder).
- b. Notwithstanding the provisions of Subsection a. of this Section, nothing contained therein shall prevent, waive or otherwise affect the right of the State to claim from any other state property reported and delivered to such state according to the provisions of Subsection a. The Contractor shall, upon request of the State, provide the State with such information as may have been obtained relevant to such claim.
- A.6. Progress Reports. At the end of each month, the Contractor shall provide the State with a progress report, which sets forth all compliance reviews assigned, work in progress and compliance reviews completed. Said report shall contain such information and shall be in such format as the State may reasonably require. The contract administrator nominated by the Contractor shall consult either by telephone or in person with the State at least once each calendar quarter to discuss the status of open and pending audits.
- A.7. Report Forms.
- a. Upon completion of an examination, the Contractor shall deliver to the State a completed examination report ("Special Report"). The results of the examination shall be contained in the Special Report. The Special Report shall only be issued after the due diligence requirements of Tennessee Code Annotated, Section 66-29-113(f) have been met, the holder has had an opportunity to respond to the findings, and an exit conference has been held with the holder. The Special Report shall contain the findings resulting from the

examination including the application of any sampling techniques and any other information, including contested matters not resolved with the holder and the holder's position thereon, necessary to explain the findings to the State.

- b. The Contractor shall notify the State if a holder's records are out-of-proof. Out-of-proof reports may be substituted with the State's consent, but only if pro-rated by the Contractor prior to submission to the State and only if allocated for each individual owner in order to reflect the actual dollar/share amount submitted. Any such report shall be marked by the Contractor as an "out-of-proof report".
- c. The Contractor shall make a report of property payable to the State within thirty (30) calendar days once the property is identified and the holder agrees that it is subject to report and delivery under the Tennessee Uniform Disposition of Unclaimed Property Act (the "Act"). In reporting such property, the Contractor shall adhere to all reporting requirements of the Act. All necessary unclaimed property reporting forms and software are available from the State's unclaimed property web site, which is located at www.treasury.state.tn.us/unclaim or at such other website address as the State may hereinafter specify by notice to the Contractor.

A.8. Delivery of Abandoned Property to the State.

- a. Once the examination is completed, the Contractor shall direct the holder or its transfer agent to promptly transfer or otherwise deliver the Abandoned Property to the State in accordance the deliver instructions contained on the State's unclaimed property website described in Section 7.c. above. In the event a holder or transfer agent does not have Internet access, the Contractor shall supply the holder or transfer agent with a hard copy of the State's Uniform Disposition of Unclaimed Property Reporting Package. The Contractor shall further direct the holder or its agent to have all such Abandoned Property properly endorsed or placed in such other form as necessary for the proper transfer of the property to the State. This requirement shall also include, where possible, deleting the name of an owner from securities held by a transfer agent or in a vault or storage area of a bank, or lost securities held by a safe deposit company or bank, and substituting in lieu thereof "State Treasurer of Tennessee", or in the nominee name established for the sole use of the State.
- b. The Contractor shall advise holders and their transfer agents, if any, of their continuing obligation to report Abandoned Property directly to the State.

A.9. Valuation of Property. The Contractor shall determine the value of securities delivered hereunder at the closing price of any security traded on an Exchange on the date the security is received by the State, as described in Section A.8 above, or if traded in the over-the-counter market, at the bid price as set forth in the pink sheets on the date the security is received by the State pursuant to Section A.8 above. Unlisted securities or other personal property without a listed value applicable to such property shall be valued in accordance with generally accepted valuation procedures applicable to such property, subject to verification by the State. The Contractor shall submit to the State documentation supporting the valuation of such property.

A.10. Disclosure of Findings. The Contractor may disclose information it acquires hereunder to the Participating States pursuant to a plan whereby the State similarly benefits from such reciprocal disclosures. Except as expressly allowed in this Contract, the Contractor shall not disclose any information it may obtain hereunder and all such information is acknowledged to be held confidentially for the State. It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

B. CONTRACT TERM:

B.1. Contract Term. This Contract shall be effective for the period commencing on November 1, 2006 and ending on October 31, 2008. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

- B.2. Term Extension. The State reserves the right to extend this Contract for an additional three-year period for a total contract term of no more than five (5) years, provided that the State notifies the Contractor in writing of its intention to do so at least thirty (30) days prior to the contract expiration date. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract and shall be based upon rates provided for in the original contract.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed three hundred fifty thousand dollars (\$350,000.00). The Payment Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Payment Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with Payment Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The Payment Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

- C.3. Payment Methodology. The Contractor shall be compensated based on the Payment Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Payment Rates:

- a. Contingency Fee Rate. In consideration of the services performed as required in this Contract, the State shall pay the Contractor a sum equal to ten and one-half percent (10 ½%) of the Abandoned Property actually paid or delivered to the State hereunder with the exception of Abandoned Property paid or delivered to the State by transfer agents. The State shall pay the Contractor a sum equal to two percent (2%) of the Abandoned Property actually paid or delivered to the State hereunder by transfer agents.
- b. Value of Abandoned Property. The value of Abandoned Property, if other than cash, shall be the closing price of any security traded on an exchange on the date the property is received by the State as described in Section A.8 above. If the property is a security traded over-the-counter, it shall be the bid price as set forth in the pink sheets on the date the property is received by the State pursuant to Section A.8. For any other property, the value shall be determined according to generally accepted valuation procedures.
- c. Fee Waiver. Notwithstanding any provision of this Contract to the contrary, the Contractor shall not be entitled to any fees resulting from a particular examination if the State finds that the examination was not performed in a commercially reasonable manner and in good faith.
- d. Non-Exclusive Contract. The Contractor recognizes that the State has or may contract with other parties or entities to provide the same or similar services and agrees that the State

shall be liable for only one fee for the report and delivery of any particular property, regardless of the number of contractors who may claim responsibility for each report and delivery. Similarly, the State recognizes and agrees that the Contractor may contract with other states or jurisdictions to ensure compliance with the unclaimed property laws of such other states or jurisdictions.

- e. Contingency of Fees. All fees of the Contractor under this Section C.3 shall be contingent on the State's recovery and collection of Abandoned Property, and the Contractor shall be responsible for the payment or making provision for the payment of all expenses incurred in connection with all services provided herein.
 - f. Refund of Fees. In the event a holder has failed to perform due diligence and in the event, within two years of receipt of the report by the State, the owner is located at the last known address as shown on the records of the holder, the Contractor shall refund, upon written notice from the State, its fees received under Section C.3.a. in connection with property reported by the Contractor and claimed by that owner. Such written notice shall include a copy of the paid claim of the State. A holder shall be deemed to have failed to perform due diligence if the State locates the owner at the owner's last known address as shown on the holder's records, unless the Contractor furnishes the State with a copy of the notice mailed to the owner by the holder as required in Tennessee Code Annotated, Section 66-29-113(f).
 - g. Impermissible Charges. Notwithstanding any provision of this Contract to the contrary, it is expressly agreed and understood that the Contractor shall not charge a fee to the State for auditing a holder, or processing records voluntarily provided by the holder or the holder's agent, for which the Contractor, an affiliate of the Contractor, or other related party has a separate agreement to process that holder's unclaimed property report.
- C.4. Invoice Submittal. The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service for the amount stipulated. Such invoices shall, at a minimum, include a statement of the value of the Abandoned Property delivered to the State for the period invoiced, the total amount requested for the period, and the manner in which such amount was calculated pursuant to Section C.3 of this Contract.
- C.5. Reduction in Fees. If the Contractor, during the term of this Contract, enters into a similar arrangement with any other Participating State that provides for fees to the Contractor that is less than the fees set forth above, then this Section shall be deemed automatically amended to substitute said fees in place of the fees provided for herein.
- C.6. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.7. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.8. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.9. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.

- C.10. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable

time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under **Tennessee Code Annotated**, Sections 9-8-101 through 9-8-407.
- D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall

remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

- D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Tennessee Treasury Department
ATTN: Director, Unclaimed Property Division
9th Floor, Andrew Jackson State Office Building
500 Deaderick Street
Nashville, Tennessee 37243
Telephone: (615) 741-6499
Telefax: (615) 734-6458

The Contractor:

PRA Government Services, LLC
Revenue Discovery Systems
ATTN: Kennon Walthall, President
3001 Second Avenue South
Birmingham, Alabama 35233
Telephone: (205) 324-0088, extension 114
Telefax: (205) 324-1538

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Workpapers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of

the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

- E.5. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by ***Tennessee Code Annotated***, Section 8-6-106.

- E.6. Termination for Convenience. In the event the State terminates this Contract for convenience pursuant to Section D.3 above, the Contractor shall be entitled to the fees provided for in Section C.3 of this Contract for all property subsequently delivered to the State by a holder as a result of the Contractor's performance of its obligations hereunder.
- E.7. Ownership of Materials. All records, reports, documents and other material delivered or transmitted to the Contractor by the State shall remain the property of the State, and shall be returned by the Contractor to the State, at the Contractor's expense, at termination or expiration of this Contract. All records, reports, documents, or other material related to this Contract and/or obtained or prepared by the Contractor in connection with the performance of the services hereunder shall become the property of the State, and shall, upon request, be returned by the Contractor to the State, at the Contractor's expense, at termination or expiration of this Contract.

IN WITNESS WHEREOF,

PRA GOVERNMENT SERVICES, LLC:

By: _____
(Signature)

Date: _____

(Signatory Printed Name and Title)

DEPARTMENT OF TREASURY:

By: _____
Dale Sims, Treasurer

Date: _____

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

By: _____
M. D. Goetz, Jr., Commissioner

Date: _____

COMPTROLLER OF THE TREASURY:

By: _____
John G. Morgan, Comptroller of the Treasury

Date: _____